

## THE MAYOR OF THE DISTRICT OF COLUMBIA

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NOTICE OF FINAL RULEMAKING

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The Mayor of the District of Columbia hereby gives notice of his adoption of the following regulations for contracting for services of expert and consulting services.

As required by section 202 of D.C. Law 6-85, D.C. Code 1-1182.2, these final rules were transmitted to the Council of the District of Columbia for its review. The Council approved the final rules on February 6, 1996. These rules will become effective upon publication of this notice in the D.C. Register. These rules were adopted on March 5, 1996.

Title 27 DCMR is amended by revising Chapter 19, Section 1901 as follows:

## 1901 EXPERT AND CONSULTING SERVICES

1901.1 A contracting officer may contract for expert and consulting services when essential to the agency's mission, when necessary to comply with a court order, or when those services would achieve maximum effectiveness or economy of operations. Expert and consulting services may include, but are not limited to, the following:

- (a) Specialized opinions or professional or technical advice not available within the agency or from another agency;
- (b) Outside points of view, to avoid too limited a judgment on critical issues;
- (c) Advice on developments in industry, university, or foundation research;
- (d) The opinions of experts whose national or international prestige can contribute to the success of important projects; or
- (e) Citizen advisory participation in developing or implementing District programs that by their nature or by statutory provision require citizen participation.

- 1901.2 Except as provided in Section 1901.4 below, a contracting officer shall not contract for expert or consulting services for any of the following purposes:
- (a) To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of agency officials;
  - (b) To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures; or
  - (c) To specifically aid in influencing or enacting legislation in the Council of the District of Columbia.
- 1901.3 Except as provided in Section 1901.4 below, the contracting officer shall ensure that a contract for expert or consulting services does not establish or allow any of the following:
- (a) An employer-employee relationship between the District and the contractor;
  - (b) Detailed control or supervision by District personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services;
  - (c) A regularly established tour of duty for the contractor; or
  - (d) Supervision of District employees by the contractor.
- 1901.4 When an expert or consultant is engaged by a court-appointed receiver or, upon review by and the concurrence of the Corporation Counsel, by any other contracting officer, pursuant to or in order to comply with a court order, Sections 1901.2 and 1901.3 shall not apply.
- 1901.5 The contracting officer shall determine in writing that the contract for expert or consulting services rather than the use of District employees is in the best interests of the District for one (1) or more of the following reasons:
- (a) The use of a contract for services is substantially more economical, feasible, or necessary due to unusual or emergency circumstances;



- (b) The services are needed for short periods only or are needed in connection with a specific project that is to be completed within a specific period; or
- (c) The services are difficult to obtain due to scarcity of skilled personnel or because the services are of a highly specialized nature.

1901.6 The contracting officer shall be responsible for determining whether a request by an agency to contract for expert or consulting services, regardless of dollar value, is justified under § 1901.5 or whether the services must be obtained in accordance with District personnel law and regulations. The contracting officer's determination shall be final.

1901.7 Before processing any contractual action or solicitation for expert or consulting services, the contracting officer shall ensure that the applicable provisions of this chapter have been complied with and that the required documentation is complete and included in the contract file.

1901.8 For procurement of expert or consulting services, the contracting officer shall ensure that the following are accomplished:

- (a) Each requirement is appropriate and fully justified in a written determination and findings. The justification shall include a statement of need and the requesting official's certification that the services do not unnecessarily duplicate any previously performed work of services;
- (b) Each work statement is specific and complete, and states a fixed period of performance within which the services are to be provided;
- (c) Each contract is awarded pursuant to the Act and this title;
- (d) Appropriate disclosure is required of, and warning is given to, contractor personnel to avoid conflicts of interest;
- (e) Each contract is properly administered and monitored to ensure that performance meets the requirements of the contract; and

- (f) Each proposed contract action is properly authorized by a written, signed document.

1901.9

A contract for expert or consulting services shall not be extended by modification. When additional services are required, a new contract shall be awarded subject to the requirements and limitations of this section.